IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1955.

No. 598

Leona Holcomb, individually, Leona Holcomb, as guardian of the person and estate of Donald George Fleming, a minor; Donald George Fleming, a minor; Edward Denham, Frank T. Denham, George Denham, Clarence M. Denham and Mary Jane Hopkins, *Petitioners,*

vs.

Aetna Life Insurance Company, a corporation, *Respondent.*

PETITION FOR REHEARING OF ORDER DENYING *CERTIORARI.*

Petitioners feel confident that the Supreme Court of the United States of America does not intend by denial of certiorari herein to approve any practice or procedure whereby inferior federal courts of equity are permitted to become a haven and refuge for tort feasors who, in the state courts, stand lawfully charged with the surreptitious and fraudulent conversion and misappropriation of property.

They, therefore, are obliged to conclude that when, upon the record, certiorari is denied and a summary injunction, issued by a United States District Court without presentation of evidence or opportunity for hearing, permitted to stand, the eminent justices of this Court must have proceeded upon an assumption that allegations of petitioners in their suit for damages in Cause No. 87402, in the District Court of Tulsa County, Oklahoma, cannot be sustained by evidence.

For this reason and in support of this, their Petition for Rehearing of the Court's Order Denying Certiorari, petitioners pray leave and permission to deliver herewith to the Clerk for examination and inspection by this Court, photo copies of the registered U. S. Bonds as the same were surrendered for cancellation to that Department as furnished and certified by the Treasury Department of the United States.

Inspection of these bonds will satisfy this Court that said bonds were surrendered and cashed without the signature of the registered owner, but bearing in lieu thereof an "X" purporting to have been witnessed solely by one "F. E. Pence," an agent of Aetna Life Insurance Company.

Together with said photo-copies of the bonds in question, petitioners are delivering also to said Clerk photo copies of the "Vault Entrance Permit" of the First National Bank and Trust Company of Oklahoma City where it is conceded in the record petitioners' testatrix, prior to being stricken, had deposited said bonds in her private safety deposit box for safekeeping. This latter exhibit shows the signature of the registered owner of said bonds, and clearly disposes of any contention that Aetna or F. E. Pence, its agent, was authorized to enter said safety deposit box and take custody and possession of said bonds.

Evidence by deposition of F. E. Pence establishes that he did in truth obtain entrance into said safety deposit box, take possession of said bonds and that it was he who surrendered them in exchange, *not for an annuity insurance policy,* but for negotiable U. S. Bonds which were later by him converted into cash.

Petitioners further, and to demonstrate the confusion and conflict between state and federal courts growing out

of Aetna's injunction from the U. S. District Court for the Northern District of Oklahoma (represented by Aetna as divesting state courts of all power and authority to grant petitioners relief of any character against any defendant in Cause No. 87402 in the District Court of Tulsa County), respectfully invite attention to a certified transcript of record of proceedings occurring on the 12th day of March, 1956, in the County (probate) Court of Creek County, Oklahoma. Said court, sitting in probate, had under consideration the Final Account of the Executor of the Estate of Rosa B. Wright Rettenmeyer, deceased, and was engaged in taking evidence. Mr. Robert J. Woolsey, of Tulsa, Oklahoma, an attorney for Aetna in this Court, appeared voluntarily in open court and interrupting proceedings to which Aetna was not a party, and in which Mr. Woolsey was not an attorney, made the following announcement:

> "If the Court please, I am Robert J. Woolsey from Tulsa. I represent the Aetna Life Insurance Company in the Federal Court in Tulsa. Without making an appearance in this case—I am just here as *amicus curiae*, and I just called my office and they informed me that I had just got a wire that the Supreme Court of the United States has denied the Writ of Certiorari of Mr. Young's petition in the interpleader action in the Federal court. That involves the case. I thought I would just make that announcement for the benefit of the parties concerned. * * *"

Aetna in this manner in the state courts, attempts to create an impression that the United States District Court for the Northern District of Oklahoma has assumed and is exercising plenary jurisdiction over the estate and property of petitioners' testatrix, even in probate, and to influence thereby the event of collateral litigation in the state courts.

Examination of the Petition for Certiorari and Reply Brief herein further emphasizes the grave consequences which result from converting a federal court of equity into an asylum for defendants charged with wrong-doing in the state courts.

The Tenth Circuit, in the case at bar, holds that a $462,703.88 suit for actual and punitive damages for the conversion of bonds on October 31, 1950, which was being diligently prosecuted in the State Court, may be summarily and permanently enjoined, in a later federal interpleader suit instituted by the converter, upon the unverified allegation, false upon the face of the converter's complaint, that the suit for conversion is a suit for "the proceeds of" a $162,606.00 annuity policy which policy was not even applied for until November 17, 1950.

The Second Circuit holds there is no federal jurisdiction in interpleader to enjoin prosecution of suits for conversion in the state courts against the complainant "*where the complainant is a wrong-doer as to any of the defendants, or where there is a question to be tried as to whether complainant, by reason of his own act, has rendered himself liable to each of the defendants.*"

—*Mallory S. S. Co.* v. *Thalheim, et al.*, 277 Fed. 196.

Petitioners respectfully submit that under the United States Constitution, the right of a private citizen to prosecute to a conclusion an action for damages for conversion of property in which he asserts an interest should not be summarily abrogated by a federal court of equity without notice, hearing or trial in either the state or federal court.

For the reasons stated, petitioners, conformable to Rule 33, sub-paragraph 2, of this Honorable Court, respectfully pray that rehearing herein be granted and that certiorari

issue by reason of intervening circumstances of substantial or controlling effect and on other substantial grounds, as set forth herein.

Respectfully submitted,

GLENN O. YOUNG,
Sapulpa, Oklahoma,
WARREN E. MILLER,
1012 Barr Building,
Washington 6, D. C.,
Attorneys for Petitioners.

GLENN A. YOUNG,
DAVID YOUNG,
JOHN W. YOUNG, and
H. K. GLUNT,
All of Sapulpa, Oklahoma,
Of Counsel.